

- ORIGINAL -

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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 **SEALED**

13 CV-S-05-0848-RCJ-LRL

14 ST. MATTHEW'S UNIVERSITY (CAYMAN
LTD., a Cayman Islands company,

15 Plaintiff,

16 vs.

17 ASSOCIATION OF AMERICAN
INTERNATIONAL MEDICAL
GRADUATES, INC., a Nevada
corporation; THOMAS MOORE, M.D.
a.k.a. "presaaimg@hotmail.com," an
individual; SARAH B. WEINSTEIN a.k.a.
"execsecaaimg@hotmail.com," an
individual; and RACHAEL E. SILVER,
an individual,

22 Defendants.

EX PARTE MOTIONS FOR:

1. PRESERVATION ORDER,
2. EXPEDITED DISCOVERY,
3. FILING UNDER SEAL, AND
4. CONSOLIDATED HEARINGS;

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT.

SEALED

25 Plaintiff ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD. ("ST. MATTHEW's"),
26 through its attorneys, pursuant to Local Rules and the inherent powers of this Court,
27 hereby brings *ex parte* motions for the issuance of orders for Preservation of Evidence;
28 Expedited Discovery; Filing Under Seal; and for consolidated hearings thereon.

1 ST. MATTHEW's seeks these motions on an *ex parte* basis as the sole means of
2 preserving necessary evidence and the proper identification and service of process upon
3 parties hereto, both necessary to the fair, accurate, and efficient resolution of this case.

4 These motions are brought and supported by the papers and pleadings attached
5 hereto, and by the attached Memorandum of Points and Authorities In Support.

6
7 DATED: July 8, 2005.

KRONENBERGER & ASSOCIATES

8
9 By:

10 Karl S. Kronenberger
11 Terri R. Hanley
12 Attorneys for Plaintiff
13 ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD.

14
15 DATED: July 11, 2005.

GREENBERG TRAURIG, LLP

16 By:

17 Mark G. Tratos
F. Christopher Austin
Ronald D. Green, Jr.
Designated Local Counsel for Plaintiff
18 ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Introduction

In connection with the attached verified Complaint (the “Complaint”), filed herewith and incorporated herein by reference¹, Plaintiff ST. MATTHEW’s seeks the following orders, with the common and collective goal of preserving the integrity and existence of crucial and volatile evidence necessary for the fair and efficient resolution of the case at hand:

- **Preservation Order:** an order preserving now-existing electronic evidence in the possession, custody and/or control of non-parties, which is subject to intentional, inadvertent, and/or automated deletion;
 - **Expedited Discovery Order:** an order allowing the immediate discovery of identifying information sought in the attached non-party subpoenas and other subpoenas to follow, required for the full and accurate identification and location of defendants;
 - **Order for Filing Under Seal:** an order allowing the attached verified Complaint, this motion, and any and all other papers in submitted in the case, as well as the case docket and any orders issued, to be filed under seal, to protect against notice of this action to as yet unidentified parties and non-parties shown to be highly likely to destroy evidence or evade service, discovery and identification; and
 - an order for a consolidated hearing on these matters.

Plaintiff further seeks the above motions (collectively, the “Motions”) – which serve merely to preserve evidence and identify parties – on an *ex parte* basis, as Plaintiff has alleged and shown, and will prove at trial, that Defendants operate using fraud and deception designed to evade identification, discovery, service, and civil and criminal liability, including using false names and corporate identities, non-operating addresses,

¹ The filing of Plaintiff's Complaint is conditioned by Rule and election upon the Plaintiff's Motion to File Under Seal, *infra*.

1 and misrepresentations regarding their personal and corporate existences. Plaintiff has
 2 also alleged and shown the Defendants have acted as a matter of course in a way to
 3 purposely avoid being located and to "hide their tracks" regarding their unlawful activities
 4 upon which this lawsuit is predicated. Given this blatant propensity on the part of
 5 Defendants for deception and evasion, the relief sought must be granted with no notice to
 6 Defendants.

7 While argument and legal authority are laid out in turn for each of the above
 8 requests, facts in common to all are stated directly below.

9 COMMON FACTS

10 As detailed in the attached verified Complaint, incorporated herein by reference,
 11 Plaintiff has for the last three years been the targeted subject of false and defamatory
 12 statements directed at it by Defendants, operating using pseudonyms and false
 13 information and via an Internet website.

14 Plaintiff ST. MATTHEW's, a private medical school located in the Cayman Islands,
 15 British West Indies, is hugely reliant upon its academic reputation in the medical
 16 community, both for its enrollment and for the post-graduate placement of its students in
 17 medical residencies throughout the U.S. and around the world.

18 Defendants have preyed upon this fact by publishing a website ("AAIMG.com")
 19 defaming Plaintiff in the quality of its educational services, posting fabricated and falsely
 20 critical results of a purported in-depth, on-site inspection it claims to have conducted of
 21 Plaintiff ST. MATTHEW's. A true and correct copy of Defendant AAIMG's website is
 22 attached hereto as Exhibit "A". Plaintiff ST. MATTHEW's has alleged on information and
 23 belief that such an inspection never took place, and the publication of these falsehoods
 24 prompted ST. MATTHEW's to investigate their source. Compl. at ¶¶34-67.

25 Defendant AAIMG claims – and at first blush appears – to be a non-profit,
 26 independent "association" of Americans who are graduates of international medical
 27 schools. Their self-stated agenda is to further the acceptance in the American medical
 28 community of foreign-schooled doctors. Ex. A at 2. Strangely, the only activity

1 undertaken to advance this agenda is the above-mentioned posting of "results" of
 2 purported site inspections of various foreign medical schools, with an unexplained original
 3 and particular focus on the Caribbean region. Ex. A at 4.

4 Defendant AAIMG has achieved a notable and disturbing level of recognition in the
 5 American medical educational community, with many prestigious institutions such as
 6 Cornell University and Harvard Medical School linking to the AAIMG website as reference
 7 material for medical school applicants and hospitals reviewing applications for
 8 residencies. (*See attached list of websites linking to "aaimg.com," attached hereto as*
 9 *Exhibit B.*)

10 Plaintiff deems Defendant AAIMG's notoriety "disturbing" in that thorough
 11 independent investigation contracted by ST. MATTHEW's has revealed a much more
 12 nefarious and subversive – and unlawful – reality regarding Defendant AAIMG:

- 13 ▪ This "association" has no members, and no way to join;
- 14 ▪ The only operation of AAIMG is a single, twelve-page website purportedly
 managed and hosted out of Russia (see Ex. A);
- 15 ▪ The only contact information provided on AAIMG's website: is a non-
 operational mail-drop service address in Nevada, and two Hotmail email
 addresses² attributed to each of two listed officers of AAIMG (Ex. A at 43);
- 16 ▪ With no staff, no capital, and no apparent source of income, AAIMG claims to
 have conducted no less than 25 intensive, on-site investigations around the
 globe, such investigations having been shown to cost approximately \$50,000
 each (See Ex. A at 11-20; Compl. at ¶63.)
- 17 ▪ AAIMG turns out to be a standard Nevada for-profit corporation, but lists no
 actual operating address (only that of a corporate services office, VAL-U-CORP
 Services, Inc. ("VAL-U-CORP"), of Nevada);

27

 28 ² Hotmail email addresses are free, publicly available Internet-based email accounts that
 require no personal or verifiable information for registration, and can be accessed from
 any computer with a web browsing program and an Internet connection.

- 1 ▪ AAIMG gives no actual address for any of the three officers it lists (individual
- 2 Defendants), but instead lists the address of VAL-U-CORP.
- 3 ▪ A full-blown investigation by an international private investigatory firm has not
- 4 been able to locate the only two individuals identified on the AAIMG website –
- 5 Defendants Thomas Moore, M.D., (AAIMG President) and Sarah Weinstein
- 6 (AAIMG Secretary) – nor the third individual Defendant, Rachael Silver (AAIMG
- 7 Treasurer).
- 8 ▪ There are only 28 Thomas Moore, M.D.s listed with the American Medical
- 9 Association.³ None are graduates of international medical schools. Of those
- 10 28 Thomas Moore, M.D.s, nine have been found not to be the man pictured on
- 11 AAIMG's website, leaving only 19 possible matches in all of the United States.
- 12 Each of those 19 gentlemen have listed affiliations with professional medical
- 13 practices in various U.S. States – none to AAIMG.

14 Furthermore, regarding the only two operational, identifiable aspects of AAIMG –
 15 the two Hotmail email addresses⁴ attributed to Defendants Moore and Weinstein –
 16 Plaintiff's investigations have revealed the following:

- 17 ▪ Both email accounts are routinely accessed from the same location by the
- 18 same user account;
- 19 ▪ Email sent to one account has been responded to from the other;
- 20 ▪ The Hotmail accounts are often accessed from anonymous, public Internet
- 21 access locations across the country, such as Internet cafés, hotels, and trade
- 22 shows; the only access points consistent with residential or small-business
- 23 Internet access accounts are clustered around Boston and Florida.⁵

24 ³ The American Medical Association indexes all medical doctors licensed in any of the
 25 United States or Territories.

26 ⁴ The metadata for the aaimg.com website shows an original contact email address of
 27 “aaimg@yahoo.com,” which is not referenced in the website, and appears to be defunct.
 Plaintiff seeks discovery regarding this email account to verify its status and origination
 information, *infra*.

28 ⁵ These key access point identifications are the primary focus of the discovery sought in
 the attached subpoenas, to identify the holders of the accounts used to by Defendants.

- 1 ■ AAIMG's website warns that it may take several days for responses to be sent
2 to emailed inquiries – a necessary arrangement for someone waiting to access
3 Hotmail accounts while traveling or from Internet caf s in order to avoid being
4 tracked or traced.

5 See also, Compl. at ¶¶34-67.

6 All of these factors converge to create the undeniable inference that, far from being
7 the well-funded, altruistic professional institution it claims to be, AAIMG is instead
8 primarily a single individual, operating a bare-bones website, using fabricated identities
9 and corporations with fictitious officers, employing anonymous, randomized account
10 access, all in a concerted effort to avoid identification, discovery, and thereby liability. On
11 information and belief, ST. MATTHEW's alleges, and intends to prove that this farce of an
12 operation is either shielding a "shake-down" artist (or artists) looking to extort money from
13 injured institutions -- acts of which they have been publicly accused – or more sinister,
14 shielding one of more individual administrators of a competing Caribbean medical school.
15 Either way, ST. MATTHEW's intends to ferret out the person or persons truly responsible
16 and bring to them answer before this Court.

17 While Plaintiff ST. MATTHEW's has suffered actual and extensive injury as a result
18 of the public's reliance on AAIMG's bogus operations, it is certainly not the only victim.
19 Many other small medical schools have been defamed and similarly injured (Ex. A at 14-
20 20) – though noticeably absent are several – related – key competitors of Plaintiff, who
21 instead are conspicuously lauded rather than panned. (Ex. A at 11-13.)

22 Public policy concern also exists in that, for years, AAIMG has been the subject of
23 intense suspicion and discussion in many online discussion boards for medical students,
24 graduates, and prospective students – some of whom were directly and personally injured
25 by AAIMG's negative "reviews" of their schools, and often calling for an investigation into
26 AAIMG, or at the very least, a disclosure of their accreditations and affiliations, which
27 never came – until now. (See attached Exhibit C for examples.)

1 On its own behalf, on behalf of its student body past, present and future, on behalf
 2 of the other medical schools injured, of behalf of international medical students
 3 everywhere, and in the interest of justice, every effort must be taken to identify the
 4 perpetrators of this continuing wrong-doing and bring them to answer for their actions.

5

6 **I. ORDER FOR PRESERVATION OF EVIDENCE REQUIRED**

7 In light of the above-stated and referenced facts, Plaintiff ST. MATTHEW's has a
 8 considerable and justified concern that, upon any notice or service of any motion or
 9 summons in the present action⁶, Defendants will act quickly and untraceably to destroy
 10 any evidence – particularly electronic evidence – in their possession or under their
 11 control. Furthermore, the evidence at issue is subject to automated deletion by the non-
 12 parties in possession.

13 As such, the evidence at issue is under a specific, significant, and imminent threat
 14 of loss sufficient to require the issuance of the order sought.

15 Plaintiff therefore seeks an order preserving the any all information regarding
 16 AAIMG, the email addresses "presaaimg@hotmail.com," "execsecaaimg@hotmail.com,"
 17 and "aaimg@yahoo.com," and the domain name "aaimg.com," to be served together with
 18 those non-parties subpoenas attached hereto as Exhibit "D." The evidence sought
 19 therein is crucial and necessary to the fair and effective resolution of this matter, and an
 20 order preserving the existence of such information for future discovery is crucial as there
 21 exists a high likelihood that such evidence will be intentionally and/or automatically
 22 destroyed, particularly the electronic evidence under the control of third parties.

23 **a. This Court has inherent power to order preservation of evidence.**

24 It is recognized that Courts have the inherent power to take action to preserve
 25 evidence, a power akin to administering membership of the bar and dismissing cases for
 26 failure to prosecute. See *Pueblo of Laguna v. United States*, 60 Fed.CI. 133 (Fed.Cir.

27 ⁶ Federal law, as well as many subscriber agreements, requires that ISPs provide notice
 28 to an account subscriber that their personal information is being sought by subpoena or
 by court order. See, e.g. 47 U.S.C. § 551(c)(2)(B) (2005).

1 2004); *Capricorn*, 220 F.R.D. at 432-3 ("[M]otions for preservation of documents or things
2 and orders granting such motions have become widely used in place of restraining orders
3 or injunctions. . . . It must also be recognized that district courts have the power to control
4 the discovery process and overall case management.") (*emphasis added*).

5 It is notable that the only Federal Court to have published a comprehensive
6 opinion addressing the issuance of preservation orders noted a particular and pressing
7 need for such an order in cases such as the present one, where electronic evidence is
8 subject to the inadvertent or systematic deletion by non-parties. See *Capricorn Power*
9 *Company, Inc. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 431-6
10 (W.D.Penn. 2004):

11 "The Court notes that orders directing parties to preserve materials or
12 documents are common in circumstances in which evidence is subject to
13 being destroyed or lost in routine and sometimes not-so-routine deletion or
14 destruction of information in various mediums. . . . Such a situation may
require immediate action by the court to preserve such electronic evidence
at least temporarily in order that the parties may have an opportunity to
confirm that such evidence is relevant to the claims before the court."

15 **b. Evidence Sought Subject to Intentional and Automated Deletion.**

16 Plaintiff has shown above, and alleged in the attached verified Complaint, that
17 Defendants have acted in a purposeful and consistent manner indicating an intention to
18 evade detection, identification and liability. Their fraudulent practices are evidence of the
19 high likelihood that, upon notice of this action, Defendants will act to destroy or hide
20 evidence.

21 In addition to preventing the intentional destruction of evidence, the order seeks to
22 prevent the automated, scheduled account and content deletions carried out by many
23 ISPs and email account providers, including Hotmail and Yahoo, which commonly have
24 automatic data deletion procedures based on the age, location, and usage levels of
25 accounts and their contents, independent of any actions by the account user. Cable
26 Internet service providers, for example, are required by Federal law to delete subscriber
27

1 data upon certain events, such as the closing of the account. See 47 U.S.C.
 2 § 551(e) (2005).

3 **c. Balance of Interests Test Strongly In Favor of Issuing Order.**

4 While case law on preservation orders is extremely scarce, and while this Circuit
 5 has not spoken to any test regarding them, the Western District of Pennsylvania in 2004
 6 conducted a thorough survey and analysis of the pertinent law, and distilled from it a
 7 three-factor balancing test, urging its adoption in other Federal Circuits. *Capricorn*, 220
 8 F.R.D. at 433-434. Plaintiff applies this test to the present case, as the most
 9 comprehensive test available, and shows below the outcome strongly favors issuance:

10 **1. First Factor: Court's level of concern in maintaining existence and
 integrity of evidence in absence of an order favors issuance.**

11 This first factor looks to the past, present, or future threat of the continuing
 12 existence, or integrity of, evidence relating to the case. *Capricorn* at 434-435. Of the
 13 three situations noted by the court where a preservation order would be effective, two are
 14 clearly present here: (1) that evidence is outside the possession of all parties, creating a
 15 concern for its continued existence, and (2) the "basis for concern" that a party would
 16 destroy or damage evidence. As explained above, Defendants (named and unidentified)
 17 have been shown to have the propensity for evasion and deception, and it is highly likely
 18 that they will act to destroy evidence upon notice of legal action; also, the evidence
 19 sought is subject to automated and routine deletion by the non-party service providers
 20 identified. As such, this prong distinctly favors granting of the order.

21 **2. Second Factor: Possibility of Irreparable Harm In Absence of
 Preservation Order Sought Strongly Favors Order.**

22 The second factor decidedly favors Plaintiff, as it has shown that the evidence
 23 sought is Plaintiff's only means by which to identify and locate parties to this suit, both
 24 named and as yet unidentified.⁷ In *Capricorn*, the Court noted of this second factor that

25
 26
 27 ⁷ See *Capricorn* at 435, noting second factor favors issuance where "[t]he loss or
 28 destruction of certain evidence can result in significant prejudice to the party seeking to
 use it in proving the party's claims."

1 "certain evidence may be so integral and essential to a party's case that an order of
 2 preservation . . . may be required, even in the absence of a threat of imminent, significant
 3 harm to the integrity or existence of the evidence," indicating that this factor holds greater
 4 weight in the balancing test than that of the first factor. *Capricorn* at 435 (*emphasis added*). In such a case, that Court held "it becomes a judicial duty to protect a party from
 5 likely harm by acting to prevent the loss or destruction of evidence, thereby ensuring that
 6 the party may prosecute or defend its case in a court of law." *Id.* (*emphasis added*).

8 **3. Third Factor: Ability to Maintain and Preserve Evidence.**

9 The third and final factor also favors Plaintiff. This factor looks to the physical
 10 ability of persons to preserve the evidence at issue, and the burden of an order thereon.
 11 *Capricorn* at 435-436. The order sought places no burden upon Defendants, as the
 12 information sought is not in their possession nor consumptive of their resources. As to
 13 the burden upon non-parties, it is minimal, being of an electronic nature and capable of
 14 being "backed-up" to removable media (such as CD-ROMS) at minimal expense, which
 15 costs will be paid for by Plaintiff.⁸

16 It is clear, therefore, that Plaintiff meets this very comprehensive and fairly-
 17 balances test, as all factors weigh strongly in favor of Plaintiff; as such, the order sought
 18 should issue as against any party in possession of the evidence sought in the subpoenas
 19 at issue.

20 **II. ORDER FOR EXPEDITED DISCOVERY**

21 As the facts stated above make clear, Plaintiff requires the verification and/or
 22 discovery of the identities and locations of Defendants in order to effectuate proper
 23 service upon the parties responsible for the wrongs alleged. Pursuant to Rule 26, good
 24 cause showing as to why such relief is needed, Plaintiff ST. MATTHEW's hereby moves
 25 the Court to allow for the immediate discovery, in advance of the required Rule 26(f)

26 27 28 ⁸ For example, Hotmail has in place a standard procedure for the backing-up and
 recording of electronic data sought by order or subpoena, and charges a minimal
 "preservation fee" for the data to be stored on disc and preserved for production upon
 order.

1 meeting on discovery, sought in the subpoenas attached hereto as Exhibits "D" and "E"
 2 (the "Subpoenas"),⁹ and such further subpoenas as are required to obtain identifying
 3 information discovered by the Subpoenas.

4 **a. Expedited Discovery Necessary For Proper Pleading and Service**

5 Expedited discovery is allowed where "good cause" is given by a showing that the
 6 need for discovery outweighs any possible prejudice to the party from whom discovery is
 7 sought. See *Semitool, Inc. v. Tokyo Electron America, Inc.* 208 F.R.D. 273, 276
 8 (N.D.Cal. 2002). As explained above, and in the attached Complaint, Plaintiff has great
 9 need for the immediate discovery of the identifying information sought, which is
 10 necessary to properly plead its case and serve process upon both named and as yet
 11 unidentified Defendants. The scope of Plaintiff's requested discovery is limited to this
 12 need.

13 In fact, it has been noted that "[e]xpedited discovery may also be appropriate in
 14 cases where physical evidence may be consumed or destroyed with the passage of time,
 15 thereby disadvantaging one or more parties to the litigation." *Qwest Communications,*
 16 *Int'l, Inc., v. World Quest Networks, Inc.* 213 F.R.D. 418, 419 (D.Colo. 2003), *citing Pod-*
 17 *Ners, LLC v. Northern Feed & Dean of Lucerne Ltd. Liability Co.*, 204 F.R.D. 675, 676
 18 (D.Colo. 2002). As shown above, not only is the discovery sought necessary to further
 19 these proceedings, but it is also at considerable risk of automated or intentional deletion
 20 by Defendants and custodial non-parties.

21 Good cause may also be found where the moving party has asserted claims of
 22 infringement and unfair competition. See, e.g., *Energetics Systems Corp. v. Advanced*
 23 *Cerametrics, Inc.*, 1996 WL 130991, *2 (E.D.Pa.1996).

27 9 To note: for sake of brevity, only the first page of the form of Rule 45 subpoenas are
 28 attached for the Court's reference; the blank proof of service and instruction attachments
 have been omitted for space consideration, but will be served upon the recipients.

1 **b. There is NO burden to either the parties from whom discovery is**
 2 **sought, or to the Defendants.**

3 Plaintiff seeks merely identifying information from non-party sources for the
 4 purpose of pleading and service. As explained above, this information – most all of it in
 5 digital format – can be, and often is, digitally copied, backed-up, and stored for future
 6 production at little to no cost, or at a minimal cost for which Plaintiff will reimburse the
 7 appropriate parties. As to the Defendants, the information sought is not in their
 8 possession, and the storage and/or production process would impose absolutely no duty
 9 or impingement upon their time or resources.

10 **c. There Is No Constitutional Privacy Right in Account Subscriber Data**

11 Courts have held that computer users do not have a legitimate expectation of
 12 privacy in their subscriber information - such as subscribers' names, addresses,
 13 birthdates, and passwords – because they have conveyed it to another person—the
 14 system operator. See *Guest v. Leis*, 255 F.3d 325 (6th Cir 2001), *citing United States v.*
 15 *Maxwell*, 45 M.J. 406, 418 (CAAF 1996); *United States v. Kennedy*, 81 F.Supp 2d 1103,
 16 1110 (D.Kan. 2000) (rejecting a privacy interest in subscriber information communicated
 17 to an internet service provider); *United States v. Hambrick*, No. 99-4793, 2000 WL
 18 1062039, at *4 (4th Cir Aug 3, 2000) (*unpublished*) (holding that defendant destroyed any
 19 privacy interest in his subscriber information when he conveyed it to an internet service
 20 provider (*citing United States v. Miller*, 425 U.S. 435, 442 (1976))).

21 **d. Subpoenas Seek Only Identifying Information**

22 The Subpoenas are minimally invasive, and carefully drafted to meet Plaintiff's
 23 prosecutorial needs, seeking only identifying information regarding accounts used by the
 24 Defendants in administering the AAIMG corporation and website. See *Qwest Comm.*,
 25 213 F.R.D. at 420 (scope of discovery sought should be considered when determining
 26 "good cause" showing). The subpoena recipients fall into two categories:

27 **Exhibit A: Defendant AAIMG's Website.**

1 **Exhibit D: Direct Service Providers.** Those subpoenas attached as Exhibit D
 2 (discussed above in the context of the preservation order sought) are addressed to
 3 providers of technical and corporate services for Defendants:

- 4 ▪ **VAL-U-CORP Services:** The Nevada incorporator for Defendant AAIMG, and
 5 also the only listed address for named individual Defendants Moore, Weinstein,
 6 and Silver, as well as the only listed “contact” address given on the AAIMG
 7 website. Subpoena seeks only contact information for any individuals or
 8 entities connected with Defendant AAIMG.
- 9 ▪ **Nausoft LLC; Demkin; Skillen:** The individual and corporate web developers
 10 identified on the AAIMG website, as those responsible for the design,
 11 development and maintenance of the website’s content, and listed as the
 12 technical contact on the registration information for the “AAIMG.com” domain
 13 name. Subpoenas seek only contact and billing information connected with the
 14 AAIMG website.
- 15 ▪ **Everyone’s Internet:** The company providing website hosting services for
 16 AAIMG and its website. Subpoena seeks account user data, including
 17 origination information, contact and payment source information, all seeking to
 18 identify those directly responsible for the operation and maintenance of the
 19 AAIMG website.
- 20 ▪ **Hotmail (Microsoft) and Yahoo!:** The two Internet-based email account
 21 providers known to host email accounts used by Defendants to operate and
 22 administer the AAIMG website. While Plaintiffs will later seek discovery of the
 23 content of these accounts, these present subpoenas seek only identifying
 24 information, including user contact information, and account creation and
 25 access location information.¹⁰

26 ¹⁰ An Internet access point is a computer with access to the Internet. A user at an
 27 Internet access point at any point in time is identified by an Internet Protocol (IP) address,
 28 comprised of a dotted decimal notation (for e.g.: “192.168.1.1) that uniquely identifies a
 particular Internet access point at a certain time. Free email providers routinely maintain
 records of IP addresses used to create free email accounts accounts; such IP addresses

- 1 • **Network Solutions; Go Daddy Software:** The Internet registrars with which
 2 the “AAIMG.com” domain name was or is currently registered. Subpoena seeks
 3 all contact and billing information connected with the registration and
 4 maintenance of the domain name.

5 **Exhibit E: ISPs of AAIMG-Related Accounts.** Those subpoenas attached as
 6 Exhibit E are addressed to Internet service providers (“ISPs”) that provided IP addresses
 7 and Internet access to the Defendants, or to other not yet unidentified AAIMG agents.
 8 The IP addresses in the subpoenas were used by Defendants when Defendants sent and
 9 received email from their Hotmail email accounts, as verified by address verification links
 10 contained within emails sent to the AAIMG email addresses. The address verification
 11 links served as a “return receipt requested” protocol, which provided Plaintiff with the
 12 verified IP addresses used by Defendants when Defendants communicated through their
 13 Hotmail email accounts. While it appears, and shall be verified, that several of these ISP
 14 accounts are held by public Internet access providers (such as Internet cafés and hotels),
 15 several ISP accounts are of the account type consistent with local, residential and small-
 16 business subscribers.

17 These subpoenas seek only identifying user account information, such as contact
 18 and billing information, and account creation and access location information (originating
 19 IP addresses, explained above).

20 **e. Order Should Therefore Issue**

21 As Plaintiff’s have demonstrated a compelling need for the information sought, as
 22 the information is necessary to the proper pleadings and service of process in the present
 23 case, and as the discovery is carefully drafted to seek only that identifying information
 24 necessary to redress those needs, Plaintiff prays the Court issue the order requested.

25
 26 will identify the ISPs providing an Internet connection to a particular access point, and
 27 ISPs in turn can be served with discovery requests to identify those account holders who
 28 use the access points. A further identifying piece of information is a “MAC,” or “media
 control access” address, which uniquely identifies the hardware of a user’s connecting
 device.

1 **III. ORDER TO FILE UNDER SEAL**

2 Lastly, pursuant to the above-discussed concerns regarding the propensity of
3 named and (as yet) unnamed Defendants to hide information, evade discovery, and
4 destroy evidence, Plaintiff ST. MATTHEW's seeks an order that these Motions, the
5 attached verified Complaint submitted for *in camera* review, and any subsequent filings in
6 the present case, including the immediate motion, any orders to be issued in the case,
7 and the case register, be filed under seal, pending the identification and service of all
8 proper Defendants to this case, or until such time this Court deems proper to lift such
9 seal, or upon motion properly brought and granted.

10 **IV. EFFECTIVE RELIEF MUST AND SHOULD BE GRANTED EX PARTE**

11 **a. LR 7-5 and Rule 65 Requirements Met**

12 The facts and arguments stated above, combined with those contained in the
13 attached Complaint, constitute the requisite showing of "good cause" and irreparable
14 harm under L.R. 7-5 and Rule 65 of the Federal Rules of Civil Procedure. By the filing of
15 these Motions, and by the allegations in the attached Complaint, Plaintiff and its attorneys
16 have certified the reasons as to why the relief sought herein must and should be granted
17 on an *ex parte* basis, with no notice to Defendants: should such notice be provided, there
18 is considerable and justified reason to fear the destruction of necessary evidence, hiding
19 of assets, and evasion of service on the part of named and as yet unidentified parties
20 responsible for the unlawful acts upon which this case is predicated.

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1 **WHEREFORE**, Plaintiff prays that this Court issue the orders requested herein, in
2 the form filed herewith.

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4 DATED: July 8, 2005. **KRONENBERGER & ASSOCIATES**

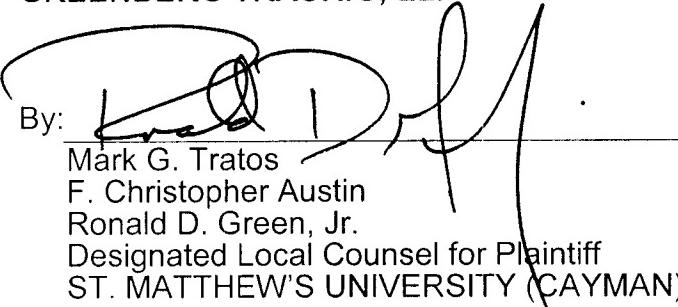
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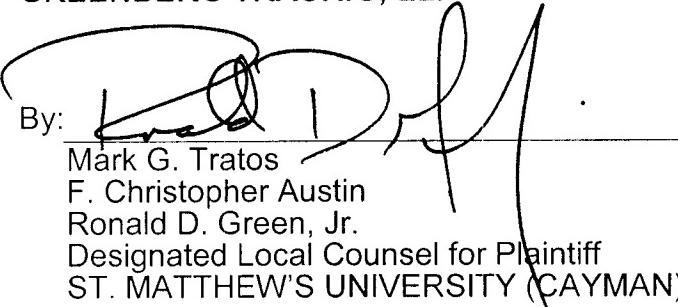

7 Karl S. Kronenberger
8 Terri R. Hanley
9 Attorneys for Plaintiff
10 ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD.

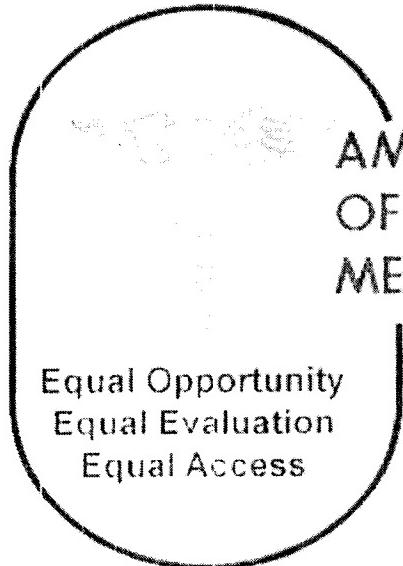
11 DATED: July 11, 2005.

12 **GREENBERG TRAURIG, LLP**

13 By: 

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15 Mark G. Tratos
16 F. Christopher Austin
17 Ronald D. Green, Jr.
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AMERICAN ASSOCIATION OF INTERNATIONAL MEDICAL GRADUATES

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All Serious Medical Students Need
to Read the AAIMG "Words of Wisdom."

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AMERICAN ASSOCIATION OF INTERNATIONAL MEDICAL GRADUATES

MISSION STATEMENT

Equal Opportunity

The American Association of International Medical Graduates, hereafter referred to as **AAIMG**, was founded in 1992 as a non-profit organization to promote acceptance of United States citizen international medical graduates into mainstream American medical practice.

AAIMG recognizes that thousands of highly qualified U.S. citizens are denied admission to medical school each year and must study abroad. Current medical school admission standards in the United States overemphasize the importance of standardized tests and grade point average.



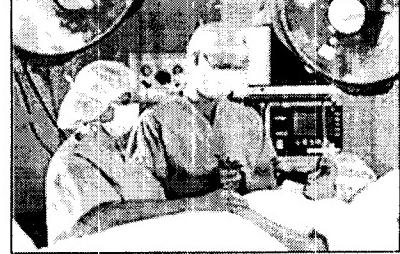
AAMIG recognizes that there are many qualities that go into the making of a skilled, compassionate physician. The organization therefore does not define merit solely on the basis of test scores and grades. We support the right of individuals who are denied access to medical education in their own country to seek professional satisfaction by studying medicine outside of the continental United States.

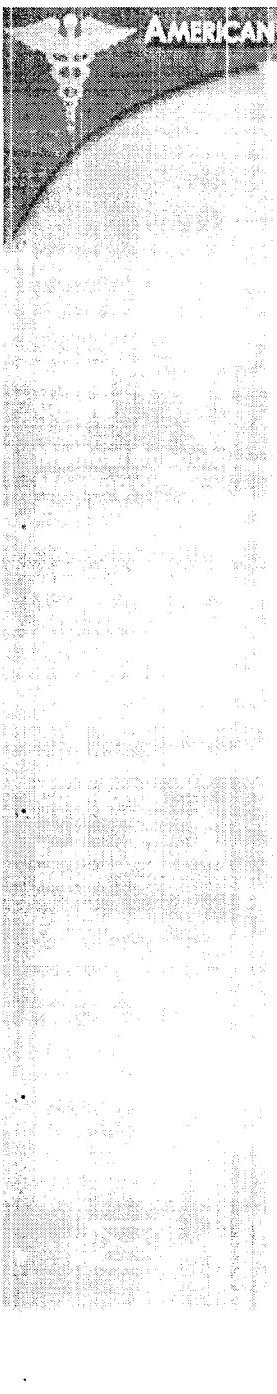
AAMIG recognizes that there are layers of prejudice and discrimination that must be overcome in order for American International Medical Graduates to gain fair access to postgraduate training positions and professional employment opportunities.

AMERICAN ASSOCIATION OF INTERNATIONAL MEDICAL GRADUATES

GOALS OF THE AAIMG

- To serve as an accurate information source for American citizens unable to gain acceptance into medical schools in the United States.
- To encourage training directors and hospitals in the United States to provide clerkship opportunities in the third and fourth year to American citizens studying medicine abroad.
- To promote equality of testing and evaluation of all International Medical Graduates.
- To encourage residency training directors to give equal consideration to qualified American International Medical Graduates for postgraduate training positions.
- To promote equal treatment of International Medical Graduates by all fifty state licensing boards.
- To overcome prejudice in the mainstream American medical community and society at large toward our citizens who study medicine abroad.




AMERICAN ASSOCIATION OF INTERNATIONAL MEDICAL GRADUATES
EVALUATION PROCESS
**EVALUATION PROCESS OF
INTERNATIONAL MEDICAL SCHOOLS**

Alarmed by the world wide proliferation of medical schools recruiting U.S. citizens, in 1999 AAIMG launched a comprehensive study of **Caribbean Basin** medical schools to assist prospective medical students with objective screening criteria and evaluative data. Since that period, evaluations of medical schools catering to American citizens in **Mexico, Central America, the United Kingdom and Eastern Europe** have been completed in 2001 and 2003. The small number of schools in the Pacific Basin are no longer operating according to the latest Word Health Organization report.

Initially, the World Health Organization was contacted to verify current listing of all schools in these regions. In some cases, local governments were contact to determine actual physical presence of the medical school and the ability of graduates to be licensed in that country. Marketing materials such as catalogs and web sites were carefully analyzed. Telephone calls were made to recruiting offices by "prospective" applicants with a standard list of questions. In some cases, email correspondence was initiated. Special attention was paid to asking questions that would identify schools willing to deviate from stated admission criteria, especially those medical schools granting advanced standing to allied health care professionals. Additional questions focused on distance learning components of the curriculum as well as fulltime onsite attendance requirements at the basic science campus.



Site visits were made to admission offices by AAIMG members posing as prospective applicants or as an applicant-parent team. "Applicants" visited each basic science campus for tours and interviewed as many students, administrators and faculty members as time constraints permitted. Directors of hospital Medical Education departments and some preceptors were contacted to verify the medical school affiliation and comment on the quality of the medical students in schools under evaluation. An attempt was made to determine if the international medical school made any liaison efforts with the clerkship site and made regular visits to monitor student performance. Comprehensive data searches were conducted to determine if schools in the study had any history of legal problems with state licensing boards or loan groups. Any complaint or written material sent directly to AAIMG indicating serious infractions was verified through original sources.

We are pleased to release the results of our third set of evaluations of medical

schools located in the Caribbean Basin, Mexico, the United Kingdom and Central America. The Eastern European Report remains as a separate section. The results represent expanded evaluation process and a list of deficiencies by category and evaluation objective. A total of 24 medical schools with programs admitting U.S. students were visited by our evaluation teams. Twelve medical schools were identified as meeting or exceeding minimum criteria in all evaluation categories, 12 were deficient. There are site visits pending for two new schools in the United Kingdom.

AAIMG does not endorse any single school or program. It is purely an information source to assist applicants in making informed, realistic choices. All prospective medical students are urged to do their own investigation and draw their own conclusions by making a personal visit to the medical admission office and the basic science campus of any foreign school in their final selection pool. **However, it is the policy of AAIMG, however, to automatically place in the deficient category any school granting advanced placement for course credit to allied health professionals such as chiropractors, podiatrists, physician assistants or nurse practitioners. Likewise, any school with significant distance learning components as part of the curriculum or part-time attendance requirements is placed in the deficient category.**

AMERICAN ASSOCIATION OF INTERNATIONAL MEDICAL GRADUATES

AAIMG EVALUATION CRITERIA

- | | |
|---------|-------------------------------------|
| SECTION | I. <u>Admission/Recruiting</u> |
| SECTION | <u>Practices</u> |
| SECTION | II. <u>Basic Science Curriculum</u> |
| SECTION | III. <u>Basic Science Campus</u> |
| SECTION | IV. <u>Student Concerns</u> |
| SECTION | V. <u>Clinical Training Program</u> |
| SECTION | VI. <u>Faculty</u> |
| SECTION | VII. <u>Financial</u> |
| | VIII. <u>Legal/Other</u> |

**Section I. Admission/Recruiting Practices:**

- There is an admission office with qualified staff in the United States or the country of origin.
- A published current catalog must accurately represent the medical school program, composition of the faculty, clerkship training sites and campus facilities.
- Admission criteria for selecting students are clearly defined in the catalog. The MCAT or a comparable exam should be required. School does not deviate from stated requirements.
- Pre-medical requirements consisting of essential liberal arts and science courses are listed in the school catalog. No student is admitted with fewer than 90 semester hours of undergraduate education or equivalent credits from foreign countries.
- The application fee is a nominal amount. Students should not be required to pay additional monies to receive scholarship information, loan applications, or other types of consideration, or be required to pay a substantial fee to reserve a seat.
- A designated admission committee follows a standardized evaluation and interview process. Personal interviews of each applicant are highly desirable. All applicants should be encouraged to visit the basic science campus.
- The medical school does not grant advanced placement to physician assistants, chiropractors, podiatrists, nurse practitioners, or other applicants with allied health backgrounds.
- Transfer students are vigorously screened for equivalent educational standards. The medical school does not take students dismissed from other medical schools for academic or disciplinary reasons.
- Entering classes are of a size compatible with facility size and size of the faculty. There is sufficient classroom space and housing for all incoming students.

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Section II. Basic Science Curriculum:

- The basic science and clinical medicine curricula conform to acceptable standards of licensing boards in the United States.
- Detailed course descriptions with credit and semester hours are calculated for each course and listed in the school catalog.
- Elective courses, including research opportunities, are available to all students.
- Beginning and ending dates for each term and academic year are published in the catalog. The duration of the entire course of study leading to the Doctor of Medicine degree is not less than 38 months.
- Students must be physically present at the basic science campus for the entire term with the exception of semester breaks or school vacations.
- There is a minimum class attendance requirement published in the catalog.
- There are clearly stated goals and objectives for each course and a detailed syllabus with evaluation criteria available to the student at the beginning of each term.
- No component of the curriculum is done by distance learning. Shortened basic science terms that allow the student to return home for self-study are not acceptable.
- Academically sound standard medical textbooks are required for each course and clerkship rotation.
- A rigorous, objective examination system for each course or academic component is part of the curriculum.
- The basic science curriculum provides supervised pre-clerkship training with adequate patient and hospital exposure before students enter third year clerkships.
- Students leaving the basic science division are required to demonstrate proficiency in a standard set of core clinical skills before admission to clerkships. Evaluators of the skill base should be qualified physicians.

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Section III. Basic Science Campus:

- The medical school campus is physically located in the country that authorized its listing by the World Health Organization.
- A permanent, independent campus is present with sufficient classrooms, labs, and equipment to meet the needs of the student body.
- Minimum lab requirements should include a gross anatomy lab with cadaver dissection, a microbiology lab, and a separate microscope lab for pathology and histology. Gross pathological specimens should be available. A physiology lab experience is highly desirable.
- There is a separate medical library area with a book and periodical collection that meets the minimum standards of a small medical school. Online resources such as Medline are available to students and faculty free of charge.
- There are facilities for quiet study time or research available to students.
- There is a designated academic dean to supervise the integrity of the basic science program.

- An administrative office is staffed by personnel to adequately process student enrollment, keep records, and attend to routine staff and faculty needs.
- There are permanent, chaired faculty committees meeting regularly around curriculum, disciplinary, academic advancement and campus safety issues.
- Grading policies are consistent among all courses and reviewed regularly by the dean or appropriate committees.
- In the case of academic failure or grade disputes, there is a published student appeal process.
- Student evaluation of courses is conducted on a regular basis.

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Section IV. Student Concerns:

- The medical school is located in an environment that provides a reasonable degree of safety for the student and family members
- Sufficient, affordable, housing is available to accommodate the student and/or family members.
- Dormitory accommodations at a reasonable rate are available for students requesting this type of accommodation.
- A meal service or student snack bar is available at affordable prices.
- The medical school provides a service to assist students with off-campus housing and mediate disputes with landlords or complaints from landlords.
- A student health clinic and/or local health care resources are readily available for routine health care needs.
- Emergency medical evacuation services/insurance are offered to students at a reasonable rate.
- The medical school provides support services such as mail distribution service, community bulletin boards, newsletters, a book store etc.
- Students have free access to internet and email facilities.
- Other amenities including recreational opportunities are available to students and their families.
- An elected student government association represents student interests to the medical school administration.
- The medical school promotes an atmosphere that promotes tolerance of religious and cultural diversity.
- Academic and psychological counseling are available free of charge from qualified staff or faculty members.
- The student attrition rate for all reasons remains low throughout the curriculum.

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Section V. Clinical Training Program:

- The medical school requires no less than 72 weeks of clerkship training. All required clerkships should have clearly defined goals and objectives.
- There is a designated academic official to supervise the integrity of the clinical training program.
- Clerkship preceptors are given academic appointments to the medical school.